

PROBLEM-SOLVING COURTS PRACTICE GUIDELINES

Access, Storage and Retention of Records

Problem-solving courts must comply with all applicable statutes and court rules regarding access to, and the storage and retention of court records. Court records, including records generated by problem-solving courts, may be accessed by court personnel, the parties to a case, entities assisting the court carry out court responsibilities and the public in accordance with IC 5-14-3 and Administrative Rule 9. The security of problem-solving court records are governed by Administrative Rule 10 and the guidelines for the retention of problem-solving court records are contained in Administrative Rule 7.

I. Access to Problem-Solving Court Records

A. Indiana Code § 5-14-3

- i. Generally court records are accessible to the general public unless specifically declared confidential by law or excepted from public access in accordance with IC 5-14-3-4.
- ii. Court records that are declared confidential pursuant to IC 5-14-3-4 may only be accessed in accordance with the applicable governing law. Public records excepted from public access include:
 - a. Those declared confidential by state statute.
 - b. Those required to be kept confidential by federal law (i.e. 42 CFR Part 2).
 - c. Those declared confidential by or under rules adopted by the Supreme Court of Indiana.

B. Indiana Administrative Rule 9

- i. Except as provided in Administrative Rule 9, access to and the confidentiality of, court records is governed by IC 5-14-3.
 - a. Court records that are declared confidential pursuant to Admin. R. 9 may only be accessed in accordance with the applicable governing law. Confidential court case records include: [Admin R. 9(G)(1)]
 1. Confidential court records pursuant to federal law (i.e. 42 CFR Part 2).
 2. Confidential court records pursuant to state law (i.e. records of juvenile proceedings (IC 31-39-1-2), pre-sentence reports (IC 35-38-1-13), medical and mental health records (IC 16-39-3-10), information in probation files (IC 11-13-1-8(b)), information deemed confidential pursuant to the Rules for Court-Administered Alcohol and Drug Programs (IC 12-23-14-13), and information deemed confidential pursuant to the Problem-Solving Court Rules (IC 33-23-16-16)).

C. Problem-Solving Court Rules

- i. A problem-solving court shall establish written policy and procedure governing access to records in the participant case management files not otherwise governed by other state or federal law. Access to all other problem-solving court records is governed by IC 5-14-3 and Administrative Rule 9.
- ii. Confidential records include all participant records governed by 42 CFR Part 2 pertaining to drug and alcohol treatment records or medical records governed by IC 16-39. These records may be released to the participant, court staff, and others

pursuant to an appropriate release of information form from the participant or authorized disclosures without the participant's consent.

II. Storage and Security of Problem-Solving Court Records

Each judge is administratively responsible for the integrity of the problem-solving court records and must ensure that measures and procedures are employed to protect these records. [Admin. R. 10(A)]

All written problem-solving court records governed by 42 CFR Part 2 "must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use." [42 CFR § 2.16] Each court is required to establish and follow written procedures to control access to and use of problem-solving court records governed by 42 CFR Part 2.

III. Retention of Problem-Solving Court Records

The retention and disposal of court records is governed by Admin. R. 7. Problem-solving court case management files must be retained for a minimum of six (6) years after the participant's final discharge from the problem-solving court. All other problem-solving court records are governed by the applicable records retention schedule as listed in Admin. R. 7.